*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others.*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[8] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

Under Rule 19b–4(f)(6) of the Act,[11] a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay of this filing. The Exchange believes that the proposed rule change does not present any novel or unique issues because the elimination of RG01–61 merely brings the Exchange's rules regarding transactions between related entities in line with the requirements in place at other national securities exchanges and the Commission. The Exchange also believes that acceleration of the operative date will allow market participants to realize the benefits of the rule change sooner. The benefits include providing a policy that is consistent with other exchanges' and Commission requirements, which will reduce unnecessary complexity and confusion. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Based on the above, the Commission designates the proposal as operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–082 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

All submissions should refer to File Number SR–CBOE–2010–082. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2010–082 and should be submitted on or before October 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–23775 Filed 9–22–10; 8:45 am]

BILLING CODE 8010–01–P

[8] The Exchange fulfilled this requirement.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] *Id.*

[12] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). *See also* 17 CFR 200.30–3(a)(59).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–62930; File No. SR–FINRA–2010–036]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend the Codes of Arbitration Procedure to Permit Arbitrators to Make Mid-case Referrals

September 17, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

FINRA is proposing to broaden an arbitrators' authority to make referrals during an arbitration proceeding by amending Rule 12104 of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and by creating new Rule 12902(e) to address the assessment of hearing session fees, costs, and expenses if an arbitrator

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

makes a referral during a case that results in panel withdrawal. Similarly, the proposal would amend Rule 13104 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to broaden an arbitrators' authority to make referrals during an arbitration proceeding and create new Rule 13902(e) to address the assessment of hearing session fees, costs and expenses if an arbitrator makes a referral during a case that results in panel withdrawal.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Background

In light of recent well-publicized securities frauds that resulted in harm to investors, FINRA has reviewed its rule on arbitrator referrals and determined that it should be amended to permit arbitrators to make referrals during an arbitration proceeding—rather than solely at the conclusion of a matter as is currently the case—when the arbitrator has reason to believe there is a serious, ongoing, imminent threat to investors that requires immediate action.

Currently, Rule 12104(b) of the Customer Code and Rule 13104(b) of the Industry Code (together, Codes), state, in relevant part, that any arbitrator may refer to FINRA for disciplinary investigation any matter that has come to the arbitrator's attention during and in connection with the arbitration *only* at the conclusion of an arbitration (emphasis added). FINRA believes that restricting arbitrators from making referrals until the conclusion of an arbitration may hamper FINRA's efforts to uncover fraud as early as possible.

FINRA is proposing, therefore, to broaden the arbitrators' authority under the Codes to make referrals during the prehearing, discovery, or hearing phase of an arbitration. Specifically, FINRA would amend Rules 12104 and 13104 of the Codes to permit referrals to the Director[3] during the prehearing, discovery, or hearing phase of an arbitration proceeding, when the arbitrators have reason to believe that any matter or conduct poses a serious, ongoing, imminent threat to investors that requires immediate action. Further, FINRA would add new Rules 12902(e) and 13902(e) of the Codes to address the assessment of hearing session fees, costs, and expenses when an arbitrator referral during a case results in the withdrawal of the panel.

Explanation of the Proposed Rule Change

Changes to the Customer Code

Rule 12104—Effect of Arbitration on FINRA Regulatory Activities

First, FINRA proposes to add the phrase "Arbitrator Referral During or at Conclusion of Case" to the title of Rule 12104 so that it reflects accurately the proposed changes. The new title would read: "Effect of Arbitration on FINRA Regulatory Activities; Arbitrator Referral During or at Conclusion of Case."

Second, the current rule would be rearranged to reflect the order in which an arbitrator may make a referral in an arbitration case. Subparagraph (a) would remain unchanged. The provision in current subparagraph (b) of the rule, which addresses arbitrator referrals made only at the conclusion of the case (hereinafter, "the post-case referral provision"), would be amended and moved to new subparagraph (e). In its place, FINRA would insert new rule language in subparagraph (b) to address arbitrator referrals made during the prehearing, discovery, or hearing phase of an arbitration (hereinafter, "the mid-case referral provision"). New subparagraph (c) would require arbitrator disclosure of a mid-case referral and withdrawal of the panel upon a party's request. New subparagraph (d) would address the administration of the case using a new panel. And finally, new subparagraph (e) would contain the rule language in current subparagraph (b) with some amendments to address post-case referrals.

Rule 12104(b)—Mid-case Referral Provision

Rule 12104(b) would be amended to state that any arbitrator may refer to FINRA any matter or conduct that has come to the arbitrator's attention during the prehearing, discovery, or hearing phase of a case, which the arbitrator has reason to believe poses a serious, ongoing, imminent threat to investors that requires immediate action. The proposed rule would state further that arbitrators should not make mid-case referrals based solely on allegations in the statement of claim, counterclaim, cross claim, or third party claim.

The new language of Rule 12104(b) would provide arbitrators with the express authority to alert the Director during a case when they learn of what they believe to be fraudulent activity that requires immediate action. This aspect of the rule would provide FINRA with a vital tool for detecting and minimizing the effects of potentially fraudulent activity as early as possible.[4]

Specifically, under the new rule language, arbitrators would be authorized to make mid-case referrals based on what they learn during the prehearing, discovery, or hearing phase of a case. Moreover, arbitrators could not make mid-case referrals based solely on allegations in the statement of claim, counterclaim, cross claim, or third party claim. This means that the mid-case referral would not be based solely on the parties' pleadings.[5] Because Dispute Resolution routinely provides copies of the arbitration claims to FINRA's Enforcement division, mid-case referrals based only on the pleadings are not necessary to apprise Enforcement of possible wrongdoing.[6] But if arbitrators learn of information relating to a serious, ongoing, imminent threat during the pre-hearing, discovery or hearing phase of a case, the new rule would permit any arbitrator to make a mid-case referral to FINRA. This rule would ensure that arbitrators have the discretion to make a mid-case referral at the time they become aware of evidence or other information that they believe poses a serious, ongoing, imminent

[3] The term Director means the Director of FINRA Dispute Resolution, and includes FINRA staff to whom the Director has delegated authority. *See* Rule 12100(k) of the Customer Code and Rule 13100(k) of the Industry Code.

[4] The proposed rule would not preclude an arbitrator from notifying other departments of FINRA of its findings, as appropriate.

[5] A pleading is a statement describing a party's causes of action or defenses. Documents that are considered pleadings are: A statement of claim, an answer, a counterclaim, a cross claim, a third party claim, and any replies. Rule 12100(s) of the Customer Code and Rule 13100(s) of the Industry Code.

[6] Dispute Resolution provides copies of all statement of claims to Enforcement. Staff also provides to Enforcement copies of answers in disputes involving promissory notes, or responses to third party claims, counterclaims or cross claims.

threat to investors. Moreover, by providing that the arbitrators could not make a mid-case referral based solely on the pleadings, the rule would help avoid unnecessary mid-case referrals and the consequent disruption to an ongoing case.

The new language of Rule 12104(b) would also require that the matter or conduct that would be the subject of the mid-case referral should pose a serious, ongoing, imminent threat to investors that requires immediate action. Arbitrators should use their judgment in determining whether the matter or conduct poses such a threat before making a mid-case referral.

Rule 12104(c)—Arbitrator Disclosure and Withdrawal

If any arbitrator makes a mid-case referral under proposed Rule 12104(b), the Director will disclose to the parties the act of making such referral. Further, if a party requests that a referring arbitrator withdraw, the entire panel, at the time of the referral, must withdraw. A party must make the withdrawal request within 10 days of receipt of notice of the referral disclosure.

First, after an arbitrator makes a mid-case referral, the Director would notify the parties of the referral. The Director will notify the parties of the referral because a referral of a potentially serious, ongoing, imminent threat to investors could cause a party to question the neutrality of the arbitrators going forward. After receiving this notification, any party may request that the panel,[7] at the time of the referral, withdraw from the case upon the Director's disclosure of a mid-case referral.

Second, the proposed rule would require that a party make the withdrawal request within 10 days[8] of receipt of notice of the disclosure. Once the parties learn of the mid-case referral, they should decide promptly whether to keep the panel or request its withdrawal.

Rule 12104(d)—Continuing the Arbitration Case With a New Panel

Proposed Rule 12104(d) would address how FINRA would administer the arbitration case if a panel withdraws from the case and a new panel is selected by the parties.

FINRA recognizes that the time required to select a new panel after the initial panel makes a mid-case referral could delay the resolution of the claimants' case. To minimize potential delays in continuing the case, FINRA Dispute Resolution staff (staff) will endeavor to complete the arbitrator selection process for the new panel, schedule the subsequent Initial Prehearing Conference, and serve the award on an expedited basis.[9] In addition, while staff cannot shorten the time requirements set forth in the Codes, parties may agree to modify a provision of the Codes by written agreement of all named parties.[10]

If the case moves forward, FINRA would administer the case as follows. First, FINRA would not close the case, but instead, would keep the original pleadings (*i.e.,* the statement of claim, answer, and any other pleadings) and proceed with the case after party selection of a new panel under the Neutral List Selection System rules.

Second, the new panel would schedule an Initial Prehearing Conference to set discovery, briefing, and motions deadlines, schedule subsequent hearing sessions, and address other preliminary matters.[11] At this time, the new panel would also determine whether any orders or rulings from the original panel were still in effect, and these decisions would be final and binding on the parties.[12]

Third, the new panel would determine whether to permit the introduction of evidence and the record of proceedings from prior hearing sessions in subsequent hearing sessions, pursuant to Rule 12604(a).[13] This would provide arbitrators with the discretion to permit access to and use of the record of proceedings from the hearing record, based on the needs of the parties and the relevance of the information in the hearing record. FINRA notes that parties would be permitted to object to the admissibility of this information, but the determination on admissibility would be within the panel's discretion.

The record of proceedings,[14] hereinafter referred to as the hearing record, from the first case would not contain references to panel discussions about a mid-case referral. Such arbitrator deliberations are not contained in the hearing record because arbitrators discuss these types of issues in an executive session which is not recorded or made a part of the hearing record. As a result, the new arbitrators would not learn of the mid-case referral or its rationale from the hearing record of the prior hearing sessions.

FINRA's Assessment of the Mid-case Referral Provision and its Potential Effects on an Arbitration Case

The proposed rule would provide an additional tool to strengthen FINRA's regulation of its members. Though mid-case referrals likely would be rare, FINRA recognizes that such a referral would have an impact on an investor's[15] arbitration case. If an arbitrator makes a mid-case referral and the panel withdraws, the customer's arbitration case would be delayed until the parties settle, continue, or begin the case anew, as discussed under Rule 12104(d). Further, a customer could incur additional costs as a result of a mid-case referral, such as attorney's fees. To minimize some of the additional expense that a customer could incur, FINRA is proposing to waive certain fees for the customer.[16]

Moreover, FINRA understands that the impact would be greatest on those customers whose hearings were almost completed. Thus, FINRA will caution arbitrators, in those instances, to weigh carefully the imminence of a possible threat to investors and the markets against the harm to the customer whose case would be disrupted. In close cases, FINRA suggests that arbitrators consider whether any time saved or harm averted by a mid-case referral warrants disrupting a customer's arbitration case. If the arbitrators conclude that disruption of the investor's case is not warranted, a referral at the end of the case may be more appropriate.

Rule 12104(e)—Post-case Referral Provision

The language in current subparagraph (b) of the Rule 12104, which addresses arbitrator referrals made only at the conclusion of the case, would be amended and moved to new subparagraph (e).

The current rule states that "only at the conclusion of an arbitration, any arbitrator may refer to FINRA for disciplinary investigation any matter that has come to the arbitrator's attention during and in connection with the arbitration, either from the record of the proceeding or from material or

[7] Under Rules 12101(g) and 13101(g) of the Codes, the term "panel" means the arbitration panel, whether it consists of one or more arbitrators.

[8] Under Rules 12100(j) and 13100(j) of the Codes, the term "day" means calendar day.

[9] FINRA launched a voluntary national program in June 2004 to expedite arbitration proceedings in matters involving senior or seriously ill parties. Thus, staff has considerable experience in expediting arbitration cases when necessary. *See* Notice to Parties—Expedited Proceedings for Senior or Seriously Ill Parties, available at *http://www.finra.org/ArbitrationMediation/Parties/ArbitrationProcess/NoticesToParties/P009636.*

[10] *See* Rules 12105(a) and 13105(a) of the Codes.

[11] *See* Rules 12500(b) and 13500(b) of the Codes.

[12] *See* Rules 12413 and 13413 of the Codes.

[13] *See also* Rule 13604(a) of the Industry Code.

[14] *See* Rules 12606 and 13606 of the Codes.

[15] In intra-industry cases, the impact could be on an associated person or on a member that is not the subject of the referral.

[16] *See infra* discussion under Rules 12902(e) and 13902(e).

communications related to the arbitration, which the arbitrator has reason to believe may constitute a violation of NASD or FINRA rules, the federal securities laws, or other applicable rules or laws."

The proposal would permit arbitrators to continue making post-case referrals. However, FINRA would amend the rule to permit arbitrators to make a post-case referral to the Director, rather than to FINRA,[17] so that the provisions of Rule 12104 are consistent. Further, FINRA would delete the term "disciplinary" to ensure that the scope of potential referrals is not limited to disciplinary findings, and would add the phrase "or conduct," so that the subject-matter of Rule 12104 is consistent throughout the rule. The rule also would be amended to replace the reference to violations of "NASD or FINRA rules" with "the rules of FINRA" because the current FINRA rulebook consists of FINRA Rules, NASD Rules, and incorporated NYSE Rules.

Rule 12902—Assessment of Hearing Session Fees, Costs, and Expenses if an Arbitrator Referral During a Case Results in Panel Withdrawal

FINRA is proposing to adopt new Rule 12902(e) to address the assessment of hearing session fees, costs, and expenses if an arbitrator makes a referral during a case that results in panel withdrawal.

First, FINRA recognizes the potential impact that the panel's withdrawal during the course of a hearing would have on the customer. Thus, FINRA is proposing new Rule 12902(e)(1) that would waive the customer's hearing session fees for the sessions conducted prior to the referral in an effort to reduce the potential financial impact.

Second, under proposed new Rule 12902(e)(2), FINRA may waive any hearing session fees assessed against a member for hearing sessions conducted prior to the mid-case referral, if the member is not the subject of the referral. The proposed rule would provide FINRA with discretion to waive any hearing session fees assessed against a member that is named in the arbitration, but is not the subject of the mid-case referral.

Last, under proposed new Rule 12902(e)(3), FINRA would postpone any scheduled hearing sessions if a mid-case referral results in the withdrawal of the panel, so that a new panel would have flexibility to schedule new hearing sessions based on its availability. Thus, if any scheduled hearing sessions are postponed, FINRA would waive the postponement fees that would otherwise accrue.

Changes to the Industry Code

Rule 13104—Effect of Arbitration on FINRA Regulatory Activities

FINRA also is proposing to amend Rule 13104 of the Industry Code to broaden the arbitrators' authority to make referrals during an arbitration proceeding in intra-industry cases. The reasons for the proposed changes to Rule 13104 are the same as those for Rule 12104 of the Customer Code discussed above.

Rule 13902—Assessment of Hearing Session Fees, Costs, and Expenses if an Arbitrator Referral During a Case Results in Panel Withdrawal

FINRA also is proposing to adopt new Rule 13902(e) to address the assessment of hearing session fees, costs, and expenses on member firms and associated persons if an arbitrator makes a referral during a case that results in panel withdrawal.

Under proposed new Rule 13902(e)(1), FINRA would waive the hearing session fees for sessions conducted prior to the referral for associated persons [18] who are not the subject of the referral in order to reduce the potential financial impact on these parties.

Further, under proposed new Rule 13902(e)(2), FINRA may waive any hearing session fees assessed against a member for hearing sessions conducted prior to the mid-case referral, if the member is not the subject of the referral. The proposed rule would provide FINRA with discretion to waive any hearing session fees assessed against a member that is named in the arbitration, but is not the subject of the mid-case referral.

Finally, under proposed new Rule 13902(e)(3), FINRA would postpone any scheduled hearing sessions if a mid-case referral results in the withdrawal of the panel, so that a new panel would have flexibility to schedule new hearing sessions based on its availability. Thus, if any scheduled hearing sessions are postponed, FINRA would waive the postponement fees that would otherwise accrue.

Benefits of the Proposed Rule Change

FINRA believes that the benefits of the proposal outweigh the potential burden that a mid-case referral could present to the individual investor. For example, if the proposed rule is invoked and arbitrators make a mid-case referral, the proposal would mitigate somewhat the harm to these investors by waiving the hearing session fees for sessions conducted prior to the referral. Moreover, FINRA believes that if arbitrators make a mid-case referral and a serious, ongoing fraud is exposed, it is likely that either the arbitration would cease because of regulatory intervention or the party who is the subject of the referral would attempt to settle, rather than risk continuing with the case.

FINRA anticipates that given the rigorous criteria for making a referral under the proposed rule change, mid-case referrals will be extremely rare. FINRA notes that arbitrators make a relatively small number of referrals under the current rule, which permits post-case referrals only. However, regardless of the number of mid-case referrals that the proposal may generate, FINRA believes that the consequences of one widespread fraud, which could prove to be financially devastating to many investors, outweigh the potential harm to an individual investor whose arbitration is interrupted.

In addition to the benefits of the proposal, FINRA believes that its mission of investor protection and market integrity requires that it review continually its rules with the goal of improving their effectiveness and relevance. As such, FINRA believes that the Codes should not contain a rule that, on its face, requires an arbitrator who has reason to believe that there is a serious, ongoing, imminent threat to investors to wait until a case is concluded before making a referral. In light of the recent well-publicized fraudulent schemes, FINRA believes inaction is antithetical to its mission and is, therefore, proposing this rule to prevent potential harm to investors and the markets. Moreover, FINRA's effectiveness as a regulator would be enhanced if it could be alerted earlier to a situation indicating the existence of a market manipulation scheme or other ongoing fraud, and it could take earlier action.

FINRA believes the proposal would strengthen its regulation of its members and would provide an additional layer of protection to investors and the markets from fraudulent securities market schemes.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[19] which

[17] *See* notes 2 and 3.

[18] Under the Industry Code, a dispute must be arbitrated if it arises out of the business activities of a member or an associated person and is between or among members; members and associated persons; or associated persons. Rule 13200(a) of the Industry Code.

[19] 15 U.S.C. 78o–3(b)(6).

requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is consistent with FINRA's statutory obligations under the Act to protect investors and the public interest because the proposal would help FINRA detect potential market manipulation or fraud at an earlier stage, which could minimize the financial losses of investors as well as the effects fraudulent schemes could have on the securities markets. Thus, the proposed rule change would strengthen FINRA's ability to carry out its regulatory mission and provide another layer of protection to investors and the markets against fraud.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Interested persons are also invited to submit written data, views and arguments concerning an arbitration panel's withdrawal. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2010–036 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–036. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2010–036 and should be submitted on or before October 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–23776 Filed 9–22–10; 8:45 am]

**BILLING CODE 8010–01–P**

[20] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–62924; File No. 10–198]**

## Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing of Proposed Minor Rule Violation Plan

September 16, 2010.

Pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19d–1(c)(2) thereunder,[2] notice is hereby given that on September 10, 2010, the BATS Y-Exchange, Inc. ("BATS Y-Exchange" or "Exchange"), filed with the Securities and Exchange Commission (the "Commission") copies of a proposed minor rule violations plan with sanctions not exceeding $2,500 which would not be subject to the provisions of Rule 19d–1(c)(1) of the Act[3] requiring that a self-regulatory organization promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[4] In accordance with Rule 19d–1(c)(2) under the Act, the Exchange proposed to designate certain specified rule violations as minor rule violations, and requests that it be relieved of the reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis.

BATS Y-Exchange proposes to include in its proposed MRVP the policies and procedures currently included in BATS Y-Exchange Rule 8.15 ("Imposition of Fines for Minor Violation(s) of Rules").[5]

According to the Exchange's proposed MRVP, under Rule 8.15, the Exchange may impose a fine (not to exceed $2,500) on a member or an associated person with respect to any rule listed in Rule 8.15.01. The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter

[1] 15 U.S.C. 78s(d)(1).

[2] 17 CFR 240.19d–1(c)(2).

[3] 17 CFR 240.19d–1(c)(1).

[4] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with the Commission shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[5] On August 13, 2010, the Exchange's application for registration as a national securities exchange, including the rules governing the BATS Y-Exchange, was approved. *See* Securities Exchange Act Release No. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198).